



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120412408-2408-01]

RIN 0648-XA795

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass

Fisheries; Final 2012 Summer Flounder, Scup, and Black Sea Bass Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is implementing final specifications, which consist of catch levels and management measures, for the 2012 summer flounder, scup, and black sea bass fisheries. The specifications are necessary to ensure the three species are not overfished or subject to overfishing in 2012. This final rule makes no changes to the interim specifications implemented on January 1, 2012, which were established using the best available scientific information.

DATES: Effective [insert date of publication in the FEDERAL REGISTER], through December 31, 2012.

ADDRESSES: Copies of the 2012 specifications document, which includes an Environmental Assessment (EA), are available from Daniel S. Morris, Acting Northeast Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. This document is also accessible via the Internet at <http://www.nero.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Policy Analyst, (978) 281-9218.

SUPPLEMENTARY INFORMATION:

On December 30, 2011 (76 FR 82189), NMFS published interim specifications for the summer flounder, scup, and black sea bass fisheries, including commercial quotas, recreational harvest limits, and, as appropriate, commercial possession limits. These interim specifications were effective on January 1, 2012, through December 31, 2012. The background and rationale supporting the interim specifications can be found in the preamble to the interim final rule cited above and are not repeated here.

As discussed in the interim final rule cited above, on December 14, 2011, the Mid-Atlantic Fishery Management Council (Council), and its Scientific and Statistical Committee (SSC), met to reconsider new stock assessment information on scup and summer flounder and to develop revised recommendations to NMFS for the 2012 specifications. The Council's revised recommendations are consistent with the measures implemented by NMFS in the interim final rule, so no changes to the interim specifications are necessary to address the Council's action.

As part of the interim final rule, NMFS solicited comment on the interim measures and acknowledged that it may adjust, as needed, the final 2012 specifications based on the Council's recommendations and public comment on the interim measures. During the 30-day comment period on the interim final rule, NMFS received three comments. These comments are addressed later in this final rule, but none warrant any changes to the interim specifications. Therefore, this final rule makes no changes to the measures implemented on January 1, 2012, for the 2012 fishing year, which remain as follows:

Summer Flounder

The updated stock assessment overfishing limit (OFL) is 31,588,000 lb (14,328 mt). The projected 2012 spawning stock biomass (SSB) is 134,667,008 lb (61,084 mt), above the SSB_{MSY} (where MSY means maximum sustainable yield) level of 132,440,000 lb (60,074 mt). Thus, the B/B_{MSY} ratio is 1.01. Applying the Council's risk policy results in an overfishing risk tolerance (P^*) of 0.40, or a 40-percent risk of overfishing the summer flounder stock. Using this information, the resulting acceptable biological catch (ABC) remains 25,581,054 lb (11,603 mt),

Consistent with § 648.102(a), for summer flounder, the sum of the recreational and commercial sector annual catch limits (ACLs) is equal to ABC. ACL is an expression of total catch (i.e., landings and dead discarded fish). To derive the ACLs, the sum of the sector-specific estimated discards is removed from the ABC to derive the landing allowance. The resulting landing allowance is apportioned to the commercial and recreational sectors by applying the FMP allocation criteria: 60 percent to the commercial fishery and 40 percent to the recreational fishery. Using this method ensures that each sector is accountable for its respective discards, rather than simply apportioning the ABC by the allocation percentages to derive the sector ACLs. This means that the derived ACLs are not split exactly at 60/40; however, the landing portions of the ACLs do preserve the 60/40 allocation split, consistent with the FMP. As a result of this apportionment, the commercial ACL remains 14,002,000 lb (6,351 mt) and the recreational ACL remains 11,579,000 lb (5,252 mt).

After deducting sector specific discards from the ACLs (459,000 lb (208 mt) for the commercial fishery, and 2,550,000 lb (1,157 mt) for the recreational fishery), and deducting the approved research set-aside of 677,128 lb (307 mt), the resulting commercial quota remains 12,729,724 lb (5,774 mt), and the recreational harvest limit remains 8,487,149 lb (3,850 mt).

Table 1 presents the final allocations of summer flounder by state. Consistent with the revised quota setting procedures for the FMP (67 FR 6877, February 14, 2002), summer flounder overages are determined based upon landings for the period January-October 2011, plus any previously unaccounted for overages from January-December 2010. The interim final rule accounted for overages in NY and DE, and no new information is incorporated here; therefore, the overages presented below in Table 1 are the same as those in the interim final rule. The final allocations presented in this final rule would be exactly the same as in the interim final rule except that two states, NC and VA, requested two transfers of commercial quota in the intervening months since the interim final rule was published. To account for these transfers, Table 1 also indicates the total amounts of commercial quota transferred to date between NC and VA.¹

Table 1 indicates that, for Delaware, the amount of overharvest from previous years is greater than the amount of commercial quota allocated to Delaware for 2012. As a result, there is no quota available for 2012 in Delaware. The regulations at § 648.4(b) provide that Federal permit holders, as a condition of their permit, must not land summer flounder in any state that the Administrator, Northeast Region, NMFS, has determined no longer has commercial quota available for harvest. Therefore, landings of summer flounder in Delaware by vessels holding commercial Federal summer flounder permits remain prohibited for the 2012 calendar year, unless additional quota becomes available through a quota transfer and is announced in the Federal Register. Federally permitted dealers are advised that they may not purchase summer

¹ For more information on the commercial quota transfers noted here, please see the following Federal Register documents: 77 FR 14481 (March 12, 2012); and 77 FR 19951 (April 3, 2012).

flounder from federally permitted vessels that land in Delaware for the 2012 calendar year, unless additional quota becomes available through a transfer, as mentioned above.

TABLE 1. FINAL STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER ALLOCATIONS FOR 2012

State	FMP Percent Share	Initial Quota, less RSA		2011 Quota Overages (through 10/31/11)		2012 Quota Transfers (through 4/3/12)		2011 Final Quotas, accounting for RSA, overages, and transfers to date	
		lb	kg	lb	kg	lb	kg	lb	kg
ME	0.04756	6,054	2,746	0	0	0	0	6,054	2,746
NH	0.00046	59	27	0	0	0	0	59	27
MA	6.82046	868,226	393,827	0	0	0	0	868,226	393,827
RI	15.68298	1,996,400	905,567	0	0	0	0	1,996,400	905,567
CT	2.25708	287,320	130,328	0	0	0	0	287,320	130,328
NY	7.64699	973,441	441,553	50,736	23,014	0	0	922,705	418,539
NJ	16.72499	2,129,045	965,735	0	0	0	0	2,129,045	965,735
DE	0.01779	2,265	1,027	54,982	24,940	0	0	-52,717	-23,913
MD	2.03910	259,572	117,742	0	0	0	0	259,572	117,742
VA	21.31676	2,713,565	1,230,873	0	0	1,710,359	775,806	4,423,924	2,006,658
NC	27.44584	3,493,779	1,584,778	0	0	-1,710,359	-775,806	1,783,420	808,946
Total	100.00	12,729,724	5,774,203	105,718	47,954	N/A	N/A	12,676,724	5,750,162

Notes: 2011 quota overage is determined through comparison of landings for January through October 2011, plus any landings in 2010 in excess of the 2010 quota (that were not previously addressed in the 2011 specifications) for each state. For Delaware, this includes continued repayment of overharvest from previous years. Total quota is the sum for all states with an allocation. A state with a negative number has a 2012 allocation of zero (0). Kilograms are as converted from pounds and may not necessarily add due to rounding.

Scup

The OFL for scup, as revised by the October assessment update, is 50.48 million lb (22,897 mt). The ABC calculated from the revised OFL using the SSC's Level 3 control rule and applying the Council's risk policy ($P^*=0.4$) is 40,879,639 lb (18,543 mt). The scup management measures at § 648.120(a) specify that ABC is equal to the sum of the commercial and recreational sector ACLs. Using the derivation methods specified by the Council, with the ABC based on the revised OFL, the commercial sector ACL/ACT is 31,887,000 lb (14,464 mt), and the recreational sector ACL/ACT is 8,994,000 lb (4,079 mt). After an RSA of 571,058 lb (259 mt) is removed, the commercial quota remains 27,908,575 lb (12,659 mt), and the recreational harvest limit remains 8,446,367 lb (3,831 mt).

The scup commercial quota is divided into three commercial fishery quota periods. There were no previous commercial overages applicable to the 2012 scup commercial quota. The period quotas, after deducting for RSA remain: Winter I (January-April)—45.11 percent, or 12.59 million lb (5,711 mt); Summer (May-October)—38.95 percent, 10.87 million lb (4,931 mt); and Winter II (November-December)—15.94 percent, 4.45 million lb (2,018 mt). Unused Winter I quota is carried over for use in the Winter II period. Consistent with the recommendation of the Council, the Winter I possession limit remains 50,000 lb (22,680 kg) per trip.

TABLE 2. FINAL COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2012 BY QUOTA PERIOD

		Commercial Annual Catch Limit		Estimated Discards		Initial Quota		Initial Quota less Overages (through 10/31/2009)		Adjusted Quota less Overages and RSA		Federal Possession Limits (Per Trip)	
Quota Period	Percent Share	lb	mt	lb	mt	lb	mt	lb	mt	lb	mt	lb	kg
Winter I	45.11	14,384,226	6,525	1,593,736	723	12,790,489	5,802	N/A	N/A	12,589,558	5,711	50,000	22,680
Summer	38.95	12,419,987	5,634	1,376,104	624	11,043,883	5,009	N/A	N/A	10,870,390	4,931	N/A	N/A
Winter II	15.94	5,082,788	2,306	563,160	255	4,519,628	2,050	N/A	N/A	4,448,627	2,018	2,000	907
Total	100.0	31,887,000	14,464	3,533,000	1,603	28,354,000	12,861	N/A	N/A	27,908,575	12,659	N/A	N/A

Notes: The Winter I possession limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of that period's allocation. The Winter II possession limit may be adjusted (in association with a transfer of unused Winter I quota to the Winter II period) via notification in the [Federal Register](#).

Metric tons are as converted from pounds and may not necessarily add due to rounding.

N/A=Not applicable.

Consistent with the unused Winter I commercial scup quota rollover provisions at § 648.122(d), this rule maintains the Winter II possession limit-to-rollover amount ratios that have been in place since the 2007 fishing year, as shown in Table 3. The Winter II possession limit will increase by 1,500 lb (680 kg) for each 500,000 lb (227 mt) of unused Winter I period quota transferred, up to a maximum possession limit of 8,000 lb (3,629 kg).

TABLE 3. POTENTIAL INCREASE IN WINTER II POSSESSION LIMITS BASED ON THE AMOUNT OF SCUP ROLLED OVER FROM WINTER I TO WINTER II PERIOD

Initial Winter II Possession Limit		Rollover from Winter I to Winter II		Increase in Initial Winter II Possession Limit		Winter II Possession Limit after Rollover from Winter I to Winter II	
lb	kg	lb	mt	lb	kg	lb	kg
2,000	907	0-499,999	0-227	0	0	2,000	907
2,000	907	500,000-999,999	227-454	1,500	680	3,500	1,588
2,000	907	1,000,000-1,499,999	454-680	3,000	1,361	5,000	2,268
2,000	907	1,500,000-1,999,999	680-907	4,500	2,041	6,500	2,948
2,000	907	2,000,000-2,500,000	907-1,134	6,000	2,722	8,000	3,629

Black Sea Bass

This final rule maintains the Council's recommended measures for black sea bass: An ABC of 4.5 million lb (2,041 mt); a commercial ACL and ACT of 1,980,000 lb (898 mt); a recreational ACL of 2,520,000 lb (1,143 mt); and a recreational ACT of 1,860,000 lb (844 mt) to mitigate the potential that the recreational sector ACL will be exceeded in 2012. Removing discards from the ACTs produces the total landings allowed from the 2012 black sea bass

fishery. When the RSA of 92,600 lb (42 mt) is removed, the remaining available landings remain as a recreational harvest limit of 1.32 million lb (598 mt) and a commercial quota of 1.71 million lb (774 mt).

Comments and Responses

As noted above, during the 30-day comment period on the interim final rule, NMFS received comment letters from three entities.

Comment 1: The Connecticut Department of Environmental Protection (CT DEP) raised concern about the 2012 scup catch levels; specifically, that such a high commercial catch level, paired with high possession limits, could flood the commercial scup market, resulting in low value for the fish. CT DEP suggested that recruitment may decline in the coming years and this would necessitate a reduction in catch that could also destabilize the fishery and its markets. CT DEP also raised concerns about how commercial discards are quantified and used in stock assessments, as well as concerns about the allocation split between the commercial and recreational fisheries.

Response: Although there may be some validity to the concerns raised by CT DEP regarding high commercial catch levels and possession limits causing the value for scup to decline, as well as a potential future decline in recruitment, these concerns are too speculative for NMFS to alter the 2012 specifications for scup, which remain consistent with the best scientific information available, are well within the catch limits recommended by the Council's Scientific and Statistical Committee (SSC), and are consistent with the recommendations of both the Council and the Atlantic States Marine Fisheries Commission (Commission). In response to the concern regarding the stock assessment, NMFS points out that the stock assessment information

was vetted through the Council's SSC, which determined the information was sufficiently reliable to establish the catch limits from which the specifications are derived. Lastly, as to the concern regarding the allocation between the commercial and recreational fisheries, this is an issue that would need to be addressed by the Council and Commission in an amendment to the Summer Flounder, Scup, and Black Sea Bass FMP and is outside the scope of the process of setting annual specifications.

Comment 2: One comment was received from a recreational fisherman who advocated for reallocation of fish from the commercial to the recreational fishery, particularly because the number of commercial operators has declined in the commenter's home state of Virginia.

Response: As noted above, the issue of allocations between the commercial and recreational fisheries would need to be addressed by the Council and Commission in an amendment to the FMP. NMFS has no authority to alter the allocation as part of the annual specifications process.

Comment 3: The Rhode Island Division of Fish and Wildlife (RI DFW) provided extensive comment on the challenges state agencies face in administering permits for and tracking landings associated with the research set-aside (RSA) program. The RI DFW recommends that RSA landings be included as a landing disposition code in the Northeast Standard Atlantic Fisheries Information System (SAFIS) dealer landing reporting system for improved landing tracking. Several additional suggestions for improving the permit issuance, monitoring, and compliance monitoring of the RSA program were also provided.

Response: NMFS recognizes that improvements can always be made in the administration of the RSA program, and NMFS also recognizes that the states may face unique

challenges with this program; however, the Council and Commission continue to value the RSA program as an important mechanism to facilitate research on Council trust resources. NMFS will explore changes to the SAFIS system as RI DFW suggest, but acknowledge at the outset that such a change is unlikely to completely capture the information as RI DFW expects due to the fact that seafood dealers (who use SAFIS to report purchases) often do not know whether landings by a fishing vessel were RSA landings or not and so could not be expected to accurately code such landings as RSA. Because none of these comments are specifically germane to the annual specifications, no changes to the 2012 measures will be made.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Assistant Administrator finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date as such a delay is unnecessary. This final rule makes no changes to the interim specifications implemented on January 1, 2012, so any delay in effectiveness of this final rule has no effect on the management measures to which the participants in the summer flounder, scup, and/or black sea bass commercial and/or recreational fisheries are currently subject.

These final specifications are exempt from review under Executive Order 12866.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

Authority: 16 U.S.C. 1801 et seq.

Dated: April 17, 2012

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

[FR Doc. 2012-9755 Filed 04/20/2012 at 8:45 am; Publication Date: 04/23/2012]